

# In the Court of Appeals of the State of Alaska

**David Lester Pierren Jr.,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13051**

## **Order**

Date of Order: **December 28, 2021**

---

Trial Court Case No. **3AN-17-04607CI**

The Appellant, David Lester Pierren Jr., filed a merit appeal in this Court challenging the superior court’s decision to dismiss Pierren’s application for post-conviction relief. In *Pierren v. State*, Memorandum Opinion No. 6965 (Alaska App. August 11, 2021), this Court reversed the decision dismissing Pierren’s application for post-conviction relief and remanded the case to the superior court for further proceedings. The Court reversed and remanded this matter because of numerous deficiencies regarding Pierren’s representation during the litigation of his PCR application, and because of an error by the superior court.

Under Alaska Appellate Rule 209(b)(5), at the conclusion of any appellate case in which a criminal defendant is represented by court-appointed counsel, the Clerk of the Appellate Courts is directed to “enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant’s conviction was reversed by the appellate court.” And because Pierren was represented by court-appointed counsel in this appeal, because Pierren’s appeal was a felony merit appeal, and because his convictions were not reversed, the Appellate Court Clerk’s Office notified Pierren that it intends to enter judgment against Pierren in the amount of \$1500 for the cost of counsel. See Alaska Appellate Rule 209(b)(6).

Pierren now seeks judicial review of the Clerk's notice of intent to enter judgment. *See* Alaska Appellate Rule 503(h)(2)(A).

Pierren opposes the Clerk's intent to enter judgment for the cost of appellate counsel on the ground that his appellate case is still pending. This Court agrees that as a practical matter, this appeal is essentially still pending. For this reason, the Court concludes that the Clerk's notice of intent to enter judgment in this case is premature.

As just mentioned, this Court reversed the superior court's judgment and remanded this matter because of numerous deficiencies regarding Pierren's representation and because of an error by the superior court. Stated another way, as a result of the Pierren's attorney's deficiencies and the superior court's error, Pierren was unable to actually litigate his PCR application. This Court remanded this matter to allow Pierren the opportunity to do so.

Because the Court remanded this case for further proceedings in the superior court — that is, to allow Pierren the opportunity to litigate his PCR application — it is possible that Pierren may, at a later date, again have to seek review of an unfavorable superior court decision on his PCR application. If Pierren does later seek review, and if the appellate proceeding does not result in the reversal of his convictions, then the Clerk's Office will be required to enter a judgment for the cost of appellate counsel.

On the other hand, if — as a result of Pierren's renewed PCR proceedings in the superior court — Pierren's underlying convictions are reversed, the Clerk's Office would not be required under the rule to enter judgment in this appeal. In other words,

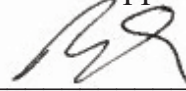
*Pierren Jr. v. State* - p. 3  
File No. A-13051  
December 28, 2021

if Pierren's convictions are reversed as a result of his PCR application, no judgment would be warranted in Pierren's current appeal because this appeal essentially was an extension of Pierren's PCR application.

Accordingly, the Appellate Clerk's current notice of intent to enter judgment against Pierren for the cost of counsel under Appellate Rule 209(b) is **VACATED** as premature.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts



---

Ryan Montgomery-Sythe,  
Chief Deputy Clerk

cc: David Lester Pierren Jr. at Wildwood Correctional Center

Distribution:

Email:  
Bair, Daniel S., OPA - Contract  
Soderstrom, Donald